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| 10/701,219 | 11/04/2003 | Jerry E. Elliott | 10 CIP(2) | 5156 |

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| EXAMINER | |
|---|---|
| DUNWOODY, AARON M | |

| ART UNIT | PAPER NUMBER |
|---|---|
| 3679 | |

DATE MAILED: 01/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| Office Action Summary | Application No. | Applicant(s) | |
|---|---|---|---|
| | 10/701,219 | ELLIOTT, JERRRY E. | |
| | Examiner | Art Unit | |
| | Aaron M. Dunwoody | 3679 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *14 November 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1-26* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-26* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

## DETAILED ACTION

### *Drawings*

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the handled comprised of rubber or an elastic material must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### *Double Patenting*

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 1-26 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-40 of copending Application No. 10/608290. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over US patent 1445286, Bosco in view of US patent 1619749.

In regards to claim 1, Bosco discloses an apparatus for installing a repair clamp on a pipe, the repair clamp including a generally cylindrical body having first and second opposed edge flanges, a slot extending the length thereof for receiving the pipe and

positioning the repair clamp about an outer circumference of the pipe, and plural nut and bolt combinations coupled to the edge flanges for drawing the repair clamp tightly about the pipe, the apparatus comprising:

a body portion (13) having first and second opposed ends;

an arm (14) having a first end pivotally coupled to the body portion intermediate the first and second opposed ends thereof, the arm further including a second opposed end adapted for insertion in an aperture in the first edge flange of the repair clamp;

a clasp (15) pivotally coupled to the body portion adjacent the first end thereof and adapted to engage an outer edge of the repair clamp's second edge flange when the body portion is in a first position relative to the arm and clasp and the repair clamp is loosely disposed about the pipe, wherein pivoting displacement of the body portion about the arm and clasp to a second position draws the repair clamp's edge flanges together for securely maintaining the repair clamp on and in engagement with the pipe and allowing the nut and bolt combinations to be tightened for securing the repair clamp to the pipe in a sealed manner. Bosco does not disclose an adjustable mechanism. Murray teaches an adjustable mechanism (17-21) to provide a dead lock for the lever when in operation (lines 93-101). As Murray relates to clamps, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide an adjustable mechanism to provide a dead lock for the lever when in operation, as taught by Murray.

Note, ***the repair clamp is not part of the claimed invention***.

In regards to claim 2, Bosco discloses the clasp includes a first end engaging the outer edge of the repair clamp's second edge flange and a second opposed end pivotally coupled to the body portion.

In regards to claim 3, Bosco in view of Murray disclose the first end of the clasp includes a recessed slot adapted to receive the outer edge of the repair clamp's second edge flange.

In regards to claim 4, Bosco in view of Murray disclose a first pivot pin coupling the second end of the clasp to the body portion.

In regards to claim 5, Bosco in view of Murray disclose a second pivot pin coupling the first end of the arm to the body portion.

In regards to claim 6, Bosco in view of Murray disclose the adjustable mechanism includes at least one elongated slot disposed in the body portion and adapted to receive the second pin and having plural engaging ribs disposed in a spaced manner along the length of the slot for engaging the second pivot pin for permitting spacing between the recessed slot of the clasp and the second end of the arm to be adjusted to accommodate a range of sizes of the repair clamp and diameters of the pipe.

In regards to claim 7, Bosco in view of Murray disclose the body portion includes a pair of elongated slots each having plural engaging members disposed in a spaced manner along the length of each of the slots for engaging the second pivot pin for permitting spacing between the recessed slot of the clasp and the second end of the arm to be adjusted.

In regards to claim 8, Bosco in view of Murray disclose the body further includes first and second parallel, spaced, linear members each including a respective elongated slot having plural engaging members, and wherein the first pivot pin is disposed in the slots in the first and second members.

In regards to claim 9, Bosco in view of Murray disclose each of the engaging members includes a curved portion for engaging and maintaining the second pivot pin in fixed position in the slots in a releasable manner.

In regards to claim 10, Bosco in view of Murray disclose each of the elongated slots includes plural curved ribs arranged in spaced, linear alignment within the slot.

In regards to claim 11, Bosco in view of Murray disclose the clasp includes a hook disposed on the second end thereof and positioned about the first pivot pin.

In regards to claim 12, Bosco in view of Murray disclose the first and second spaced members of the body portion form a handle at respective first connected ends thereof.

In regards to claim 13, Bosco in view of Murray disclose second opposed ends of the first and second members are arranged in a spaced manner from each other and wherein the arm and the clasp are disposed between the first and second members adjacent the second ends thereof.

In regards to claim 14, Bosco in view of Murray disclose the first and second pivot pins are disposed between and coupled to the first and second members.

In regards to claim 15, Bosco in view of Murray disclose the adjustable mechanism further includes first and second elongated linear slots respectively

disposed in the first and second members with each of the slots having plural engaging members disposed in a spaced manner along the respective lengths thereof, and wherein the engaging members in the first slot engage a first end of the second pivot pin and the engaging members in the second slot engage a second opposed end of the second pivot pin.

In regards to claim 16, Bosco in view of Murray disclose the arm and the clasp are disposed in closely spaced, aligned relation when the body portion is pivotally displaced to the second position.

In regards to claim 17, Bosco in view of Murray disclose a handle disposed on the second end of the body portion.

In regards to claim 18, in Figures 3-6, Montgomery discloses the handle is comprised of rubber or an elastomeric material.

In regards to claim 19, Bosco in view of Murray disclose the second end of the arm includes a hook structure for insertion into the aperture when the body portion is in the first position, and wherein the hook structure cannot be removed from the aperture when the body portion is in the second position for locking the repair clamp in position on the pipe.

In regards to claim 20, Bosco in view of Murray disclose the aperture is in the form of a generally linear slot and the hook structure includes first and second coupled flat portions having approximately 90 degrees relative orientation.

In regards to claim 21, Bosco in view of Murray disclose the clasp is generally C-shaped and includes an elongated slot for engaging an outer edge of the repair clamp's second edge flange.

In regards to claim 22, Bosco in view of Murray disclose the apparatus is comprised of high strength steel.

In regards to claim 23, Bosco in view of Murray disclose first and second pins attached to the body portion for pivotally coupling the arm and clasp, respectively, to the body portion, and wherein the second pin forms an axis of rotation about which the body portion rotates when moved between the first and second positions.

In regards to claim 24, Bosco in view of Murray disclose the first and second pins and an end portion of the clasp engaging an outer edge of the repair clamp's second edge flange are in general linear alignment when the body portion is in the second position.

In regards to claim 25, Bosco in view of Murray disclose the body portion is pivotally displaced about the second pin in moving the body portion from the first to the second position in removing the apparatus from the repair clamp.

In regards to claim 26, Bosco in view of Murray disclose an apparatus for installing a repair clamp on a pipe, the repair clamp including a generally cylindrical body having first and second opposed edge flanges, a slot extending the length thereof for receiving the pipe and positioning the repair clamp about an outer circumference of the pipe, and plural nut and bolt combinations coupled to the edge flanges for drawing the repair clamp tightly about the pipe, the apparatus comprising: a body portion having

first and second opposed ends; an arm having a first end pivotally coupled to the body portion intermediate the first and second opposed ends thereof, the arm further including a second opposed end adapted for insertion in an aperture in the first edge flange of the repair clamp; a clasp pivotally coupled to the body portion adjacent the first end thereof and adapted to engage an outer edge of the repair clamp's second edge flange when the body portion is in a first position relative to the arm and clasp and the repair clamp is loosely disposed about the pipe, displacement of the body portion about the arm and clasp to a second position wherein pivoting draws the repair clamp's edge flanges together for securely maintaining the repair clamp on and in engagement with the pipe and allowing the nut and bolt combinations to be tightened for securing the repair clamp to the pipe in a sealed manner; and a moveable member connecting the arm to the body portion, wherein the position of the arm relative to the clasp may be adjusted for engaging repair clamps having a range of sizes for positioning on pipes having a range of diameters.

***Response to Arguments***

Applicant's arguments with respect to claims above have been considered but are moot in view of the new ground(s) of rejection.

Applicant argues that the rubber handle is shown in all views. The Examiner disagrees. If the rubber handle is shown in all views, then the Applicant simply has to label it; however, the illustrations of the instant application fail to provide a depiction of a rubber handle.

Applicant argues the embodiments or Figures of the instant application are different from the embodiments or Figures of copending application 10/608,290; and therefore, the Double Patenting rejection does not apply. The Examiner disagrees. As the Applicant should know, Double Patenting is a rejection applied only to the claims of application. Therefore, claims 1-26 remain provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-40 of copending Application No. 10/608290, regardless if the embodiments or Figures are the same or different.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron M. Dunwoody whose telephone number is 571-272-7080. The examiner can normally be reached on 7:30 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on 571-272-7087. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Aaron M Dunwoody
Primary Examiner
Art Unit 3679

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